

1 MOHAJERIAN INC  
 2 AL MOHAJERIAN, CSBN 182013  
 3 AARON G. CAPPS, CSBN 215803  
 4 A Professional Law Corporation  
 5 1925 Century Park East, Suite 350  
 Los Angeles, California 90067  
 Tel: (310) 556-3800/Fax: (310) 556-3817

FOR COURT USE ONLY

5 Attorney for Defendant Ronsin Photocopy, Inc.

8  
**UNITED STATES DISTRICT COURT**  
 9 **NORTHERN DISTRICT OF CALIFORNIA**

11 SECOND IMAGE, INC., a California  
 12 Corporation

} CASE NO.: C075242

13 Plaintiff(s),

} **REPLY TO OPPOSITION OF PLAINTIFF  
 TO DEFENDANT RONSIN PHOTOCOPY,  
 INC.'S MOTION TO DISMISS PURUSANT  
 TO RULE 12(b)(1), RULE 12(b)(6) OR, IN  
 THE ALTERNATIVE, TO TRANSFER  
 VENUE FOR CONVENIENCE (28 U.S.C. §  
 1404 (a))**

14 vs.  
 15 RONSIN PHOTOCOPY, a California  
 Corporation; CHRISTINA SANCHEZ, an  
 individual ; and DOES 1 through 10

} DATE: February 27, 2008  
 TIME: 9:00 a.m.  
 DEPT: 3

16 Defendant(s).  
 17

18 **Honorable Judge Phyllis J. Hamilton**

20 Defendant Ronsin Photocopy, Inc. submits the following reply to Plaintiff Second  
 21 Image, Inc.'s opposition to its Motion to Dismiss.

23 **1. PLAINTIFF HAS NOT MET THE REQUIRED ELEMENTS OF THE CFAA**

24 Plaintiff's opposition focuses on the fact that Plaintiff has made the conclusory allegation  
 25 that it suffered losses and damages in excess of \$5,000. However, as stated previously, Title 18,  
 26 U.S.C. Section 1030 is a criminal statute. As such, it is narrowly construed, *Dowling v. United*  
 27 *States*, 473 U.S. 207, 213 (1985). The CFAA is narrowly construed and the meaning of "loss" is  
 28 defined by statute and therefore in order for there to be a cause of action under the CFAA loss as

1 defined by the CFAA must be alleged. Loss has consistently meant a cost of investigating or  
 2 remedying damage to a computer, or a cost incurred because the computer's service was interrupted.  
 3 *Nexans Wires S.A. v. Sark-USA, Inc.* 319 F.Supp.2d 468, 475 (S.D.N.Y.2004), *aff'd*, 166 Fed.App.  
 4 559 (2d Cir.2006).

5 Plaintiff's Complaint is devoid of any allegations regarding a loss as defined under the  
 6 CFAA. Plaintiff's have made a conclusory allegation of a \$5,000 loss. This does not meet the  
 7 statutory requirements of the CFAA. In a Rule 12(b)(6) motion, the court need not accept as true  
 8 conclusionary allegations or legal characterizations. Nor need it accept unreasonable inferences or  
 9 unwarranted deductions of fact. *In re Delorean Motor Co.* (6th Cir. 1993) 991 F.2d 1236, 1240;  
 10 *Transphase Systems, Inc. v. Southern Calif. Edison Co.* (CD CA 1993) 839 F.Supp. 711, 718.

11 Thus, Plaintiff has not, and cannot, properly plead an action based on the CFAA in this  
 12 action, therefore this cause of action should be dismissed without leave to amend.

13

14 **2. PLAINTIFF HAS NOT MET THE REQUIRED ELEMENTS OF SECTION 43(A)**  
 15 **OF THE LANHAM ACT, 15 U.S.C. SECTION 1125(a)**

16 Plaintiff does not address Defendant's contention that, according to face of the FAC,  
 17 Plaintiff Second Image provides services exclusively in California. (FAC para.2) Thus, according to  
 18 a allegations contained in the FAC, it would be impossible for Defendant Ronsin, which allegedly  
 19 services clients throughout the United States, to influence the purchasing decision of potential  
 20 customers of Plaintiff Second Image in interstate commerce (outside of California) as there are no  
 21 interstate customers of Plaintiff Second Image.  
 22

23 Any alleged misconduct engaged in by Ronsin in connection with its "nationwide client  
 24 base" could not possibly be a material deception as these customers would not be "potential  
 25 customers" of Plaintiff Second Image. Ronsin cannot influence the purchasing decision of a  
 26 potential Second Image client via interstate commerce because, according to the facts allegations  
 27

MOHAJERIAN INC  
 A PROFESSIONAL LAW CORPORATION  
 1925 CENTURY PARK EAST, SUITE 350  
 LOS ANGELES, CALIFORNIA 90067  
 TEL: (310) 289-3800 FAX: (310) 556-3817

1 contained in the FAC, Plaintiff Second Image does not participate in interstate commerce.  
2

3 Thus, Plaintiff has failed to meet the elements required under Section 43(a) of the Lanham  
4 Act, therefore this cause of action should be dismissed without leave to amend.  
5

6 **3. CONCLUSION**

7 For the foregoing reasons, including the reasons listed in the Motion to Dismiss, this matter  
8 should be dismissed without leave to amend.  
9

10 Date: February 12, 2008

11 **MOHAJERIAN INC**

12 By: 

13  
14 AL MOHAJERIAN  
15 AARON G. CAPPIS  
16 Attorneys for Defendant RONSIN  
17 PHOTOCOPY, INC.  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

MOHAJERIAN INC  
A PROFESSIONAL LAW CORPORATION  
1925 CENTURY PARK EAST, SUITE 350  
LOS ANGELES, CALIFORNIA 90067  
TEL: (310) 289-3800 FAX: (310) 556-3817